

State of New Mexico
County of Bernalillo
Second Judicial District Court

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2ND JUDICIAL DISTRICT COURT
Bernalillo County
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CLERK OF THE COURT
Catherine Chavez

STATE OF NEW MEXICO ex rel. RAÚL
TORREZ, District Attorney, Second Judicial
District,

Plaintiff,

v.

NEW MEXICO CIVIL GUARD, BRYCE L.
SPANGLER (a/k/a Bryce Provance, a/k/a
Jason Bjorn), JOHN C. BURKS, ORYAN
MIKALE PETTY, JONATHAN MICHAEL
VERA, MICHAEL LYN HARRIS,
THOMAS W. GILLESPIE, DAVID BERNIE
ROSE, CRAIG PORTER FITZGERALD,
NICOLAS LOMAS, DAVID S. RICE,
DEVON MICHAEL BAY, WESSLEY AVIS
RODGERS, WALTER EUGENE
RODRIGUEZ, and DANIEL MATTHEW
ESPINOSA,

Defendants.

Cause No. D-202-CV-2020-04051

**VERIFIED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

**I.
INTRODUCTION**

1. The people of the State of New Mexico, by their Constitution and through their elected representatives, have reserved the responsibility of public peacekeeping to the Government in the form of organized police agencies and an organized military. The people's decision serves the twin reinforcing goals of public safety and accountability. Government oversight of the police and the military assures selective membership, professional training, uniform rules and regulations governing acceptable conduct, and a clear delineation of duties, methods, and objectives. It also assures responsibility and consequences for unacceptable or

unlawful conduct. New Mexico law forbids unregulated private security forces and unregulated paramilitary organizations because they are not accountable to the people, they pose a threat to public safety, and they encourage rather than deter or quell violence.

2. The so-called “New Mexico Civil Guard” (NMCG) is not an organized police force or an organized part of the military. Nor is it affiliated with or overseen by the Government. Yet this group formed for the claimed purpose of maintaining the peace and both fashions itself and pretends to function as a part of the state military. NMCG’s coordinated, armed, and uniformed presence at public events results in intimidation and creates a chilling effect on the exercise of First Amendment rights to address matters of public concern. NMCG’s attempt to operate as a private police or military unit in Bernalillo County is a *per se* public nuisance that must be abated to protect public safety, allow the free and open use of public forums, and minimize violent armed confrontations.

3. On June 15, 2020, protesters assembled at the statue of Spanish conquistador Juan de Oñate near Old Town in Albuquerque, seeking the statue’s removal. Numerous members of the NMCG attended the protest as a private vigilante or paramilitary unit wearing matching camouflage attire and sporting assault rifles and other military-style gear. Their professed purpose was to “protect” the Oñate statue from defacement. In the tense atmosphere—exacerbated by NMCG’s heavily armed presence—an individual who apparently is not affiliated with the paramilitary group battered several female protesters before he ultimately shot and injured another protester.

4. This was not the first time that NMCG’s usurpation of law-enforcement authority threatened public safety in Bernalillo County or elsewhere in New Mexico, and—absent declaratory and injunctive relief—it will not be the last. Over the past several months, NMCG,

whose members include some individuals associated with white supremacist and neo-Confederate organizations, has held numerous “musters” and training sessions where it practices paramilitary tactics and techniques. And the group has deployed those techniques at protests, demonstrations, and public gatherings throughout New Mexico, providing wholly unauthorized, heavily armed, and coordinated “protection” from perceived threats. Because NMCG operates and trains as a military unit independent from civil authority and unlawfully assumes law-enforcement functions, the threat of physical unrest accompanies the group at all public events it attends as a private paramilitary force, and its armed presence has the demonstrated potential to embolden others to engage in violence.

5. NMCG has unlawfully exercised and intends to continue to unlawfully exercise the power to maintain public peace reserved to peace officers. NMCG’s membership is not composed of peace officers, and New Mexico law clearly provides that NMCG and its members have no civil or military authority to maintain the public peace. Accordingly, NMCG’s actions violate the Legislature’s proscription of “exercising or attempting to exercise the functions of a peace officer” without due authority. NMSA 1978, § 30-27-2.1(A)(1) (1999). These actions also contravene the exclusive constitutional power of the Governor “to call out the militia to preserve the public peace,” N.M. Const. art. V, § 4, and the exclusive constitutional and statutory power of the Governor to determine the membership of a functioning and organized militia and to oversee the militia as commander-in-chief. N.M. Const. art. XVIII, § 1; NMSA 1978, § 20-2-1(C) (1987). Indeed, NMCG’s attempt to operate as a military unit free from public oversight threatens the New Mexico Constitution’s guarantee to every member of the public that “[t]he military shall always be in strict subordination to the civil power.” N.M. Const. art. II, § 9.

6. Because NMCG's activities violate New Mexico law, the State need not "sit idly by and wait" for NMCG "to show up and break the law and cause (or increase the risk of) harm, fear, injury, or death." *City of Charlottesville v. Pa. Light Foot Militia*, No. CL 17-560, 2018 WL 4698657, at *5 (Va. Cir. Ct. July 7, 2018). Instead, the State may take legal action to halt NMCG's unlawful activity before that activity results in calamity or loss of life.

7. This is a case about paramilitary action that threatens public safety and intimidates the public's exercise of First Amendment rights. It is not a case about gun ownership, gun possession, or self-protection. Importantly, NMCG's paramilitary activity is not protected by the Second Amendment, and the relief that the State seeks does not run afoul of Defendants' Second Amendment rights. *See* U.S. Const. amend. II; *see also* N.M. Const., art. II, § 6. Although the Second Amendment confers an "individual right to possess and carry weapons in case of confrontation," it "does not prevent the prohibition of private paramilitary organizations." *District of Columbia v. Heller*, 554 U.S. 570, 592, 621 (2008). For that reason, the United States Supreme Court has long recognized that "[m]ilitary organization and military drill . . . are subjects especially under the control of the government of every country. They cannot be claimed as a right independent of law." *Presser v. Illinois*, 116 U.S. 252, 267 (1886); *see also Heller*, 554 U.S. at 621 (reaffirming *Presser*). And for good reason: "[T]he proliferation of private military organizations threatens to result in lawlessness and destructive chaos." *Vietnamese Fishermen's Ass'n v. Knights of the Ku Klux Klan*, 534 F. Supp. 198, 216 (S.D. Tex. 1982). Reflecting those principles, this suit aims to restore the public-private equilibrium long protected by New Mexico law and now disrupted by Defendants' unlawful paramilitary conduct and assumption of law-enforcement duties.

8. Nor is this a case about political viewpoints. To the extent NMCG has certain white supremacist ties, their viewpoint heightens the risk of violence at certain public events because of the antipathy they hold for particular groups of protesters. But the threat posed to public safety by paramilitary actions at public demonstrations or gatherings exists regardless of the paramilitary organization's underlying ideology. Put simply, there is no place in an ordered civil society for private armed groups that seek to impose their collective will on the people in place of the police or the military.

9. The State—whose legally bestowed responsibility to protect public safety is undercut by unauthorized private militia activity—seeks declaratory and injunctive relief to prevent Defendants from operating as an organized military unit and from assuming law-enforcement duties by providing armed protection of persons, property, and businesses at protests, demonstrations, and other public gatherings. Without such relief, Bernalillo County will be forced to continue to grapple with the presence of an unaccountable vigilante militia, endangering the safety of Bernalillo County's residents, visitors, and law-enforcement officers.

II. JURISDICTION AND VENUE

10. This Court has subject-matter jurisdiction over this action pursuant to Article VI, Section 13 of the New Mexico Constitution.

11. Venue is proper in this district under NMSA 1978, § 30-8-8(B) (1963) because Defendants have created a public nuisance in Bernalillo County that threatens public safety and interferes with the public right to use public property. Venue is also proper under NMSA 1978, § 38-3-1(A) (1988) because Defendants have organized to commit, have committed, and intend to continue committing the criminal act of impersonating a peace officer in Bernalillo County

that renders them liable in this civil action and because Plaintiff and some Defendants reside in this judicial district.

III. PARTIES

12. The State of New Mexico, in its *parens patriae* capacity, and by and through the District Attorney for the Second Judicial District, Raúl Torrez, brings this action to enforce the Constitution and laws of the State and to protect the safety and well-being of the citizens of New Mexico.

13. District Attorney Torrez is authorized by statute to initiate and prosecute civil actions on behalf of the State, when, as true here, he has a reasonable belief that the interests of the State require such action. NMSA 1978, § 36-1-18(A)(1) (2001). He is further authorized to sue Defendants to abate the public nuisance created by their activities. Section 30-8-8(B).

14. Defendant “New Mexico Civil Guard” is a self-declared militia. The group has appeared—armed, uniformed, and equipped with other military-style gear—at several protests, demonstrations, and public gatherings in Albuquerque, New Mexico, and other cities and municipalities around the State with the stated purpose of protecting persons, businesses, and property from perceived threats.

15. Defendant Bryce L. Spangler (also known as “Bryce Provance” and “Jason Bjorn”) is the founder of NMCG and the group’s self-described “Chaplain.”¹ He resigned from the group for a brief time in June 2020, but has since resumed his leadership role.² Spangler is a

¹See Matthew Reisen, *NM Civil Guard Is Marching Forward, Despite Calls to Step Down*, Albuquerque J. (July 4, 2020), <https://perma.cc/4CML-GFUU>; David Stevens, *NM Civil Guard at Protests to ‘Defend’ Citizens, Property*, E. N.M. News (June 3, 2020), <https://perma.cc/XTQ5-KA26>; Jason P Bjorn, Facebook (June 22, 2020, 8:30 P.M.), <https://perma.cc/6C97-59SL>.

² See *Your New Mexico Government: Men with Rifles*, Santa Fe Reporter (June 11, 2020), <https://www.sfreporter.com/podcasts/podcast/202>

resident of Albuquerque, New Mexico, and was present with other NMCG members at the June 15 incident at the Oñate statue.³ As recently as December 2019, Spangler served as the State Commander of New Mexico and the Director of the Western Region for an organization called the New Confederate States of America.⁴ He is a convicted felon and has served prison time for offenses including burglary and armed robbery.⁵

16. Defendant John C. Burks, a resident of Albuquerque, New Mexico, is a member of NMCG and the self-described “Captain” of the group’s Bernalillo County “company.”⁶ He is a veteran of the U.S. Army and was present with other NMCG members at the June 15 incident at the Oñate statue.⁷

17. Defendant Oryan Mikale Petty is a member of NMCG and the self-described “Captain” of the group’s Curry County “company.”⁸

18. Defendant Jonathan Michael Vera is a member of the NMCG and a leader of the group’s Eddy County “company.” Ex. A.

19. Defendant Michael Lyn Harris is a member of the NMCG and a leader of the group’s Eddy County “company.” *Id.*

0/06/11/men-with-rifles/; Jason P Bjorn, Facebook (June 22, 2020, 8:30 P.M.), <https://perma.cc/6C97-59SL>; New Mexico Civil Guard, Facebook (June 5, 2020, 1:32 P.M.), <https://perma.cc/3BXH-UC7K>.

³ See, e.g., LeoLyonZagamiChannel, *Exclusive Interview with Leader of New Mexico Civil Guards [sic] After Shooting in Albuquerque*, YouTube, at 11:33–40 (June 24, 2020), <https://youtu.be/MqboVq9DqXw>.

⁴ CSA II®: The New Confederate States of America, <https://perma.cc/NMH7-HAVZ> (last visited July 7, 2020).

⁵ John Burnett, *New Mexico Leaders to Militia: If You Want to Help the Community, Stop Showing Up Armed*, NPR (July 7, 2020), <https://perma.cc/7GYP-UCB8>.

⁶ Matt Zapotosky et al., *Former City Council Candidate Arrested After Man Is Shot in at New Mexico Protest with Militia Group*, Wash. Post (June 16, 2020), <https://perma.cc/6LVM-U2P2>; Hannah Colton, *Armed Civilian Groups Patrol ABQ Protests, Raising Questions of Coordination with Police*, KUNM (June 8, 2020), <https://perma.cc/PA6M-JJQG>; New Mexico Civil Guard, Facebook (June 4, 2020, 3:46 P.M.), <https://perma.cc/HJ3R-7HEL> (instructing new members to contact “Captain Burks”).

⁷ Matthew Reisen, *NM Civil Guard Is Marching Forward, Despite Calls to Step Down*, Albuquerque J. (July 4, 2020), <https://perma.cc/4CML-GFUU>.

⁸ David Stevens, *NM Civil Guard at Protests to ‘Defend’ Citizens, Property*, E. N.M. News (June 3, 2020), <https://perma.cc/XTQ5-KA26>.

20. Defendant Thomas W. Gillespie is a member of the NMCG and a leader of the group's San Juan County "company." *See* Ex. B.

21. Defendant David Bernie Rose is a member of the NMCG and the "Point of Contact" for the group's Sierra County "company."⁹

22. Defendant Craig Porter Fitzgerald is a member of NMCG,¹⁰ as well as a member of the Proud Boys,¹¹ a group the Southern Poverty Law Center has designated as a hate group.¹² He was present with other NMCG members at the June 15 incident at the Oñate statue.¹³

23. Defendant Nicolas Lomas is a member of NMCG and a resident of Los Lunas, New Mexico.¹⁴

24. Defendant David S. Rice is a member of NMCG¹⁵ and was present with other NMCG members at the June 15 incident at the Oñate statue.

25. Defendant Devon Michael Bay is a member of NMCG and a resident of Albuquerque, New Mexico. He was present with other NMCG members at the June 15 incident at the Oñate statue.

26. Defendant Wessley Avis Rodgers is a member of NMCG and a resident of Albuquerque, New Mexico.¹⁶

⁹ Bernie Rose, Facebook (Mar. 21, 2020, 3:55 P.M.), <https://perma.cc/9BYW-66PR>.

¹⁰ *NMCG Patriot News Network with Craig*, NMCG Patriot News Network, at 0:07–17 (June 30, 2020), <https://anchor.fm/bryce51/episodes/NMCG-Patriot-News-Network-with-Craig-eg4h45>.

¹¹ *NMCG Patriot News Network with Craig*, NMCG Patriot News Network, at 0:07–17 (June 30, 2020), <https://anchor.fm/bryce51/episodes/NMCG-Patriot-News-Network-with-Craig-eg4h45>.

¹² *Proud Boys*, S. Poverty L. Ctr., <https://perma.cc/8X5Y-7R4Y> (last visited July 6, 2020).

¹³ LeoLyonZagamiChannel, *Exclusive Interview with Leader of New Mexico Civil Guards [sic] After Shooting in Albuquerque*, YouTube, at 10:40–45 (June 24, 2020), <https://youtu.be/MqboVq9DqXw>.

¹⁴ Andrew Gunn, *Politics, Misinformation Enter Fray as "Anti-Quarantine" Protest and COVID Cases Continue*, N.M. Daily Lobos (Apr. 26, 2020), <https://perma.cc/689V-G42E>.

¹⁵ Matthew Reisen, *NM Civil Guard Is Marching Forward, Despite Calls to Step Down*, Albuquerque J. (July 4, 2020), <https://perma.cc/4CML-GFUU>.

¹⁶ *NMCG Patriot News Network and the Devil Dog Wes*, NMCG Patriot News Network, at 0:20–22, 13:01–33 (June 29, 2020), <https://anchor.fm/bryce51/episodes/NMCG-patriot-News-Network-and-the-Devil-Dog-Wes-eg3o6c>.

27. Defendant Walter Eugene Rodriguez is a member of NMCG and a resident of Grants, New Mexico.¹⁷

28. Defendant Daniel Matthew Espinosa, a resident of Albuquerque, New Mexico, attended the June 15 incident at the Oñate statue, as well as several other events in the weeks prior, with members of the NMCG. As of June 15, he was in the process of formally joining NMCG.

IV. LEGAL BACKGROUND

29. New Mexico has carefully regulated the circumstances under which organized force can be exercised by officials and persons who may lawfully maintain the peace in the state. Peace officers are “vested by law with a duty to maintain public order or to make arrests for crime.” NMSA 1978, § 30-1-12(C) (1963). These duties are expressly reserved for peace officers. Except when specifically authorized to do so by the Governor during “times of riot or unusual disturbance,” “[n]o person shall assume or exercise the functions, powers, duties and privileges incident and belonging to the office of special deputy sheriff, marshal, policeman or other peace officer without first having received an appointment in writing from a person authorized by law to appoint special deputy sheriffs, marshals, policemen or other peace officers” NMSA 1978, § 29-1-9 (2006). It is a crime to “exercis[e] or attempt[] to exercise the functions of a peace officer” without due authority. Section 30-27-2.1(A)(1).

30. The Legislature protects public safety and assures accountability by regulating the qualifications and duties of police officers and imposing administrative oversight. The Legislature enacted the Law Enforcement Training Act that establishes a law-enforcement

¹⁷ *Id.*

academy, minimum training requirements for certification, and requirements for continuing training “to constantly upgrade law enforcement within the state.” NMSA 1978, §§ 29-7-1 to -15 (1969, as amended through 2020). The Legislature further provided for suspension and revocation of law-enforcement certification based on dishonesty or fraud, the commission of a felony, or violations of law involving moral turpitude. NMSA 1978, § 29-7-13 (1993). The Legislature recently amended the Act to require revocation of law-enforcement certification for crimes involving the use or threatened use of force. NMSA 1978, § 29-7-15 (effective Sept. 20, 2020).

31. The operation of military forces within New Mexico also is carefully circumscribed. The entities that are authorized to use military force on the State’s behalf are collectively known as the “[m]ilitia.” NMSA 1978, § 20-2-1(A) (1987). The militia is divided into three classes: (1) the National Guard, (2) the State Defense Force, and (3) the unorganized militia, defined as all able-bodied male residents of New Mexico between the ages of 18 and 45 (or 64 for retired members of the National Guard) who may be activated into the National Guard or State Defense Force. NMSA 1978, § 20-2-2 (2017). The militia does not include organized police forces. NMSA 1978, § 20-2-1(A) (1987). Whereas the National Guard is federally recognized and can be called or ordered into active federal service, the State Defense Force is “exclusively a state entity.” NMSA 1978, §§ 20-2-1, -6(A) (1987). The ranks of the State Defense Force can be filled by the unorganized militia only by order of the Governor. *See* Section 20-2-1(C) (1987). Absent activation into the State Defense Force by the Governor, the unorganized militia lacks authority to operate as a military force.

32. It is not the function of the organized militia—that is, the National Guard and the State Defense Force—to exercise the powers and duties of peace officers. When “the power of

the county is insufficient to enable the sheriff to preserve the peace and protect the lives and property of the peaceful residents of the county,” the county sheriff may request aid from the Governor “[i]n case of any breach of the peace, tumult, riot or resistance to process of this state or imminent danger thereof.” NMSA 1978, § 20-2-3(D) (2017). The Governor has the power to order the militia into active service for emergencies “beyond local control.” Section 20-2-3(A). However, the Governor must first use the National Guard and may use the State Defense Force only when the National Guard is absent or insufficient to respond to the emergency. Section 20-2-3(G). The militia must cooperate with civil officers and may only provide the services necessary to stabilize a situation and return it to full local control. Section 20-2-3(E), (F).

33. By law, the organized militia may operate only under the strict control of governmental officials. All military personnel in New Mexico are ultimately subordinate to the Governor, who is “the commander in chief of the military forces.” N.M. Const. art. V, § 4; *see also* N.M. Const. art. XVIII, § 1; NMSA 1978, § 20-1-4(A) (1987). State law charges the Department of Military Affairs with exercising on the Governor’s behalf “organizational, operational and administrative command and control” of the state’s armed forces. NMSA 1978, § 20-3-1 (1989). The Adjutant General, who serves as military chief of staff to the Governor and as head of the Department of Military Affairs, is empowered to “prescribe policies, rules and procedures for the orderly functioning” of New Mexico’s military forces. NMSA 1978, § 20-3-2(B), (C) (2018). Article II, Section 9 of the New Mexico Constitution—part of the state’s Bill of Rights—requires that “[t]he military shall always be in strict subordination to the civil power.” This provision assures a government by the people, not a government by the military, and protects against a military state. *Cf. Reid v. Covert*, 354 U.S. 1, 23–30 (1957) (plurality opinion) (explaining the importance of a civilian-controlled military to the drafters of the U.S.

constitution). This guarantee is threatened equally by attempts to operate independent of civil authority by an organized military, paramilitary groups, and mercenaries.

34. To ensure appropriate governmental control over military personnel requisite for an orderly and peaceful society, New Mexico requires that its armed forces conform to a suite of state-law requirements. The Governor prescribes the “composition, uniform, equipment, and location of all units of the militia.” NMSA 1978, § 20-2-7(A) (1987). State law further regulates the State Defense Force’s manner of dress, what arms members of the Force may carry, how and when they train, and how they are disciplined or punished. NMSA 1978, §§ 20-5-6, -7, -9, -10 (1987, as amended through 1989). A member of the military who participates in a breach of peace is subject to court martial. NMSA 1978, § 20-12-70 (1989).

35. To preserve the critical principle of civil-military accountability, New Mexico has criminalized paramilitary activity by prohibiting teaching, training, practicing, or receiving instruction in “technique[s] capable of causing death or injury . . . in furtherance of civil disorder.” NMSA 1978, § 30-20A-3 (1990). The Legislature specifically excluded—and thus chose not to restrict—such lawful pursuits as hunting or rifle clubs, target-shooting, and self-defense. NMSA 1978, § 30-20A-4 (1990). It is also a crime for any person, without authorization, to “wear[] a military uniform or facsimile thereof with the intent to impersonate a person with military authority.” NMSA 1978, § 20-11-5 (1987).

36. As part of its legal framework for ensuring that the use of organized force is the sole province of governmental or government-approved actors, New Mexico also heavily regulates the provision of private security services. Private patrol companies and individuals employed as security guards or private patrol operators (who supervise security guards) generally must be licensed by the New Mexico Regulation and Licensing Department. NMSA 1978,

§§ 61-27B-3, -11 (2007). Certain criminal convictions preclude obtaining such a license, NMSA 1978, §§ 61-27B-10(A)(4), -16(B)(4) (2007), and all individuals seeking a license must submit to a background check, NMSA 1978, § 61-27B-34 (2007). Every private patrol company must maintain an insurance policy, NMSA 1978, § 61-27B-11(B) (2007); a security guard must complete a proper training course, NMSA 1978, §§ 61-27B-16(B)(5), -17(B)(4), -18(B)(5) (2007); and both security guards and private patrol operators must complete an examination, NMSA 1978, §§ 61-27B-10(A)(3), -16(B)(3) (2007). No individual can become a private patrol operator until he or she has obtained at least three years' work experience as a security guard or an equivalent position. NMSA 1978, § 61-27B-10(A)(5) (2007). It is a crime to violate these requirements. NMSA 1978, § 61-27B-32 (2007).

37. This comprehensive regime enables New Mexico to maintain civil authority over all military, law-enforcement, and peacekeeping activity within its borders and, in particular, to ensure that such activity remains the province of government or government-approved actors only. Within this scheme, there can be no room and no tolerance for an unsanctioned private paramilitary organization endangering the public and increasing the likelihood of armed conflict by attempting to exercise police or military powers. *Pa. Light Foot Militia*, 2018 WL 4698657, at *4 (observing that, under a similar scheme in Virginia, “[t]here appears to be no place or authority for private armies or militia apart from the civil authorities and not subject to and regulated by the federal, state, or local authorities”).

V. FACTUAL ALLEGATIONS

A. NMCG Operates and Trains as a Military Unit Independent from Civil Authority

38. NMCG held its inaugural “muster” in Albuquerque, New Mexico, on March 14, 2020, initiating a course of conduct that unmistakably marks the group as an unlawful paramilitary organization.¹⁸

39. The stated purpose of this “muster” was to “to summon, organize, and train the Militia of NM.”¹⁹ Individuals who attended this initial “muster” were split into eleven constituent “companies,” each associated with a New Mexico county.²⁰

40. Another NMCG “muster” was held in Albuquerque on May 31, 2020,²¹ and several others have been held in various New Mexico cities during the past four months.²²

41. NMCG claims to have 150 members from a dozen or so counties and an additional 125 recruits ready to “join up,” 30 of whom are in Bernalillo County, New Mexico.²³

¹⁸New Mexico Civil Guard, Facebook (Mar. 12, 2020, 5:54 P.M.), <https://perma.cc/K6AY-YDV9>; Jason P Bjorn, Facebook (Mar. 7, 2020, 10:19 P.M.), <https://perma.cc/8W2F-V4UM>; Armand Vaquer, *Militia Forming: New Mexico Civil Guard*, Armand’s Rancho del Cielo (Feb. 13, 2020, 9:24 P.M.); Dav Harzin, *Militia Muster Call New Mexico*, My Militia (n.d.), <https://perma.cc/J7D9-ECJX>.

¹⁹ Dav Harzin, *Militia Muster Call New Mexico*, My Militia (n.d.), <https://perma.cc/J7D9-ECJX>.

²⁰*Id.*; see also New Mexico Civil Guard Bernalillo County, Facebook, <https://perma.cc/33VB-HH6Q> (last visited June 16, 2020); New Mexico Civil Guard San Juan County, Facebook, <https://perma.cc/P9TA-CYHL> (last visited June 16, 2020); New Mexico Civil Guard Eddy County, Facebook, <https://perma.cc/X7DC-VX7K> (last visited June 16, 2020); New Mexico Civil Guard Sandoval County, Facebook, <https://perma.cc/RL4V-JA4F> (last visited June 16, 2020); New Mexico Civil Guard Dona Ana County, Facebook, <https://perma.cc/9XGH-T486> (last visited June 16, 2020); New Mexico Civil Guard Curry County, Facebook, <https://perma.cc/85RP-VYXF> (last visited June 16, 2020).

²¹ New Mexico Civil Guard, Facebook (May 20, 2020, 1:21 P.M.), <https://perma.cc/3BR4-VPXT>.

²² New Mexico Civil Guard, Facebook (May 17, 2020, 8:48 P.M.), <https://perma.cc/HZV9-9HET> (announcing June 20 “muster” in Las Cruces); New Mexico Civil Guard, Facebook (Apr. 20, 2020, 5:34 P.M.), <https://perma.cc/5DYR-Y3KS> (announcing May 16 “muster” in Grant County); New Mexico Civil Guard, Facebook (Mar. 17, 2020, 8:12 A.M.), <https://perma.cc/SB9Y-D5KM> (announcing April 18 “muster” in Las Cruces).

²³ Matthew Reisen, *NM Civil Guard Is Marching Forward, Despite Calls to Step Down*, Albuquerque J. (July 4, 2020), <https://perma.cc/4CML-GFUU>.

The group performs its own “background checks” on new recruits and has plans to elect a “colonel” to oversee the group’s activities and recruiting statewide.²⁴

42. NMCG also holds various other “training” sessions.²⁵ The group held a “joint training exercise” with a Texas-based militia held on May 23, 2020, near Vado, New Mexico.²⁶ NMCG held its most recent “training” session in Wagon Wheel, New Mexico, on June 27, 2020.²⁷

43. At “training” sessions, NMCG practices military tactics and techniques with the intent to deploy those techniques at future public gatherings where NMCG anticipates civil disorder.²⁸ After one training, NMCG posted a “standing order” on its Facebook page instructing members to read a 1965 Special Forces Handbook to learn “principles and tactics” for application at “FTX” (a military acronym for field training exercises).²⁹ Defendant Spangler has confirmed that NMCG “train[s] with weapons.”³⁰

44. Videos and articles posted on NMCG’s Facebook page also instruct members in military techniques such as “combat movement,”³¹ “knife fighting,”³² “riot control,”³³ “military-

²⁴ *Id.*

²⁵ New Mexico Civil Guard, Facebook (June 5, 2020, 2:43 P.M.), <https://perma.cc/Q9JZ-ALUZ> (“Attention!! Next Training will be conducted on June 28th please contact me directly for info!! All units are welcome”).

²⁶ Dav Harzin, Facebook (May 11, 2020, 9:38 P.M.), <https://perma.cc/9T26-3CNJ>. A NMCG member also posted information about the event to the profiles of several individuals active on the My Militia forum. *E.g.*, Dav Harzin, My Militia (May 15, 2020, 10:13 P.M.), <https://perma.cc/582Y-BHGP>.

²⁷ Matthew Reisen, *NM Civil Guard Is Marching Forward, Despite Calls to Step Down*, Albuquerque J. (July 4, 2020), <https://perma.cc/4CML-GFUU>.

²⁸ *Id.* (stating that NMCG practices “combat formations” and “crowd control techniques” and “go[es] on patrols” at trainings).

²⁹ New Mexico Civil Guard, Facebook (May 24, 2020, 11:19 A.M.), <https://perma.cc/TS48-YCNM>.

³⁰ Algernon D’Amassa, ‘Watch Your Six.’ *New Mexico Civil Guard’s Facebook Page Calls Out New Mexico Residents*, Las Cruces Sun News (June 18, 2020), <https://perma.cc/DBW6-H9PX>.

³¹ New Mexico Civil Guard, Facebook (June 30, 2020, 10:29 P.M.), <https://perma.cc/QU2R-A6PT>; *see also Green Beret: Combat Movement in the Battlefield*, YouTube (Feb. 7, 2020), <https://youtu.be/11VJw5mD3vk>.

³² New Mexico Civil Guard, Facebook (June 30, 2020, 10:25 P.M.), <https://perma.cc/L92H-V8TK>; *see also Knife Fighting 101 – Black Scout Combative*, YouTube (Mar. 30, 2016), <https://youtu.be/BxoScSOkCCs>.

³³ New Mexico Civil Guard, Facebook (June 29, 2020, 9:45 A.M.), <https://perma.cc/YR54-RZKQ>; New Mexico Civil Guard, Facebook (June 29, 2020, 9:40 A.M.), <https://perma.cc/2M8T-EKYC>; *see also Crowd*

style movement on foot,”³⁴ “urban warfare,”³⁵ “ambushing,”³⁶ body armor setup,³⁷ and “patrolling.”³⁸

45. Mimicking the way that actual military units identify themselves, NMCG members attach name tapes to their uniforms bearing the group’s initials.³⁹

46. Members of NMCG “must be able to possess a firearm,” “should possess a working rifle, carbine, or shotgun,” and “are encouraged to own a sidearm as well.”⁴⁰ NMCG encourages rifle ownership “as they are more suited to Militia purposes.”⁴¹ NMCG has requested that members equip themselves with a long list of other military-type gear, including army field manuals, Kevlar helmets, plate carriers (i.e., bulletproof vests), desert and woodland “BDUs” (i.e., battle dress uniforms), ammo pouches, face paint, and weapons-maintenance gear.⁴²

and Riot Control Training, YouTube (Apr. 30, 2018), <https://youtu.be/76A19OknZqU>; *U.S. Marines Riot Control Techniques Training*, YouTube (Feb. 8, 2014), <https://youtu.be/57sgb3T4lgQ>.

³⁴ New Mexico Civil Guard, Facebook (June 21, 2020, 7:47 P.M.), <https://perma.cc/DTT4-5Z2Z>; *see also March or Die! A Basic Guide to Military-Style Movement on Foot*, Varusteleka.com (June 12, 2020), <https://perma.cc/YA8K-MYEP>.

³⁵ New Mexico Civil Guard, Facebook (June 12, 2020, 4:33 P.M.), <https://perma.cc/NZY2-BTVK>; *Israeli Urban Warfare*, YouTube (July 9, 2014), <https://youtu.be/bzY59IJ1A-w>.

³⁶ New Mexico Civil Guard, Facebook (Jun3 12, 2020, 4:30 P.M.), <https://perma.cc/2WQV-E7B5>; *see also Basic Fundamentals and Principles of Ambushing*, YouTube (Aug. 10, 2015), <https://youtu.be/rYfhBxCckXo>.

³⁷ New Mexico Civil Guard, Facebook (Apr. 25, 2020, 10:30 A.M.), <https://perma.cc/9L8F-4UPY>; *see also How a Navy SEAL Sets Up His Body Armor* (Nov. 17, 2017), <https://youtu.be/CD-ceTptLbM>.

³⁸ New Mexico Civil Guard, Facebook (Apr. 11, 2020, 10:07 P.M.), <https://perma.cc/FMF5-QP3G>; *see also Individual Patrolling Considerations PART II*, YouTube (Jan. 31, 2016), <https://youtu.be/2seBikXBDJg>.

³⁹ New Mexico Civil Guard, Facebook (May 7, 2020, 7:41 P.M.), <https://perma.cc/VA76-8BEC>.

⁴⁰ Dav Harzin, *Militia Muster Call New Mexico*, My Militia (n.d.), <https://perma.cc/J7D9-ECJX>.

⁴¹ *Id.*

⁴² New Mexico Civil Guard, Facebook (Mar. 17, 2020, 8:07 A.M.), <https://perma.cc/7PB7-ER6M>.



Source: Matthew Reisen, *NM Civil Guard Is Marching Forward, Despite Calls to Step Down*, Albuquerque J. (July 4, 2020), <https://perma.cc/4CML-GFUU> (photograph by Roberto E. Rosales).

47. NMCG wears and carries the aforementioned gear when it attends protests, demonstrations, and public gatherings. To an untrained eye, NMCG members are therefore indistinguishable from authorized military forces; and even to a trained eye their appearance is confusing and distracting.



Source: Andrew Gunn, *Politics, Misinformation Enter Fray as “Anti-Quarantine” Protest and COVID Cases Continue*, N.M. Daily Lobos (Apr. 26, 2020), <https://perma.cc/689V-G42E> (photograph by Liam Debonis).



Source: New Mexico Civil Guard, Facebook (Apr. 26, 2020, 12:51 A.M.), <https://perma.cc/CZ83-PDNE>.

48. Despite these numerous markers of NMCG’s status as an unlawful paramilitary organization, NMCG attempts to cloak its activities with a guise of lawful authority,⁴³ invoking NMSA 1978, Section 20-2-2 (2017), which defines New Mexico’s “unorganized militia” as “all able-bodied male citizens” between the ages of 18 and 45. But NMCG’s communications ignore that New Mexico’s constitutional and statutory provisions do not give the “unorganized militia” the power to activate itself. *See supra* ¶¶ 31, 33–35. Rather, the authority to activate the unorganized militia belongs exclusively to the Governor of New Mexico as commander-in-chief of New Mexico’s military forces. *Id.* Neither the Governor nor any of her designees has activated the members of NMCG. Accordingly, NMCG’s paramilitary activity is wholly outside New Mexico’s carefully circumscribed regime regulating the use of organized force.

⁴³ *See e.g.*, Dav Harzin, *Militia Muster Call New Mexico*, My Militia (n.d.), <https://perma.cc/J7D9-ECJX>.

B. Defendants Falsely Assume the Duties of Local Law Enforcement

49. NMCG’s self-described mission is to “respon[d] to emergency and dangerous situations, including [n]atural disaster, humanitarian crisis, civil disturbances, and civil defen[s]e”⁴⁴—functions that it has no legal authority to provide. This mission statement parrots the types of emergencies for which the Governor is empowered to call out the National Guard or State Defense Force. *See* NMSA 1978, § 20-2-3 (2017). Unlike those legally sanctioned and heavily regulated entities, however, NMCG possesses no legal authority to augment or supplant local law enforcement in emergency situations.

50. Despite NMCG’s lack of legal authority to perform law-enforcement functions, it has increasingly done so in recent weeks. As nationwide protests erupted in late May 2020 in response to the murder of George Floyd at the hands of Minneapolis police officers, NMCG began attending protests against police brutality and structural racism for the ostensible purpose of “protecting” persons, businesses, and property. NMCG branded this initiative “Operation Floyd.”⁴⁵ As recently as July 9, NMCG deployed to a protest.⁴⁶ The following are examples of statements made by NMCG on its Facebook page documenting its intent to usurp law-enforcement functions:

a. “[W]hen you have groups infiltrating and using a tragedy to incite violence and rioting across the nation we will show up in force to help make sure our community isn’t added to the list of cities burning. . . . [W]e need to be out here

⁴⁴ *About*, New Mexico Civil Guard, Facebook, <https://perma.cc/EK8A-2SH4> (last visited June 26, 2020).

⁴⁵ Matthew Reisen, *NM Civil Guard Is Marching Forward, Despite Calls to Step Down*, Albuquerque J. (July 4, 2020), <https://perma.cc/4CML-GFUU>.

⁴⁶ Jason P Bjorn, Facebook (July 10, 2020, 1:40 A.M.), <https://perma.cc/974J-JKNJ> (picture of armed individuals with military-style gear overlooking protest captioned “NMCG on the scene as always”).

patrolling our community to make sure infiltrators of these peaceful protests do not attack and loot businesses [sic].”⁴⁷

b. “Violent protests in [Albuquerque] last night the Bernalillo company is called out and under arms we will be protecting local businesses every night until Sunday”⁴⁸

c. “If you are a member be ready to be called up any day at anytime [sic] to defend your neighbors.”⁴⁹

d. “[I]t’s gonna be up to us to keep protesters separated, because you see, that’s what the police do. They come out with riot shields. We’re gonna have to get riot shields. We’re gonna have to get batons. We’re gonna have to get enough OC [pepper] spray to put down a frickin riot.”⁵⁰

51. Based on the unsubstantiated suspicion that members of the anti-fascist protest movement Antifa are participating in these protests, NMCG asserts that it must confront protesters to prevent the nation from slipping into anarchy.⁵¹ In a June 3 Facebook post, NMCG posted pictures of a New Mexico State University professor and other individuals whom the group suspects have ties to Antifa, along with a warning to members to “[w]atch your six” (i.e.,

⁴⁷ New Mexico Civil Guard, Facebook (June 2, 2020, 9:09 A.M.), <https://perma.cc/R9RU-PVL9>.

⁴⁸ New Mexico Civil Guard, Facebook (June 1, 2020, 10:01 A.M.), <https://perma.cc/AV5R-ENTK>.

⁴⁹ New Mexico Civil Guard, Facebook (May 31, 2020, 8:54 P.M.), <https://perma.cc/QD98-S5SS>.

⁵⁰ *Oñate Statue NMCG and the Proudboys*, NMCG Patriot News Network, at 32:31–33:05 (June 30, 2020), <https://anchor.fm/bryce51/episodes/Oate-statue-NMCG-and-Proudboys-eg4ri6>.

⁵¹ New Mexico Civil Guard, Facebook (May 31, 2020, 8:54 P.M.), <https://perma.cc/QD98-S5SS> (stating that the protests are “no longer” about “Floyd’s death” but rather “a Global move for Anarchy.”)

watch your back).⁵² Defendant Fitzgerald has even described NMCG, without offering justification or explanation, as “stand[ing] up” to the “Jihadi onslaught.”⁵³

52. Defendant Spangler requested on NMCG’s Facebook page that followers provide the group with “intel on riots or attacks” rather than report such incidents to local law enforcement. Ex. C. He has stated that it is NMCG’s “duty to interpose ourselves between people with no training and people with training,” making clear that the group intends to continue intervening as law enforcement would in any disturbances that arise at protests.⁵⁴

53. NMCG also intends to use force if, in its own unaccountable and unreviewable discretion, it decides that force is necessary. Defendant Spangler has stated that the group “has the same escalation of force as the police department”⁵⁵ and has described NMCG as an “auxiliary force” to law enforcement.⁵⁶ Similarly, Defendant Petty has stated that NMCG will “go ahead and use lethal force” when it deems necessary based on the group’s own subjective determination.⁵⁷

54. After attending unspecified protest events, NMCG requested that members buy pepper-spray grenades on eBay, presumably for the purpose of dispersing protesters at future events.⁵⁸ Similarly, the group promoted aerosol tear gas grenades as a “good buy for all

⁵² New Mexico Civil Guard, Facebook (June 3, 2020, 5:58 P.M.), <https://perma.cc/62NR-TQZU>; Algernon D’Amassa, *‘Watch Your Six.’ New Mexico Civil Guard ‘s Facebook Page Calls Out New Mexico Residents*, Las Cruces Sun News (June 18, 2020), <https://perma.cc/DBW6-H9PX>.

⁵³ *NMCG Patriot News Network with Craig*, NMCG Patriot News Network, at 32:23–56 (June 30, 2020), <https://anchor.fm/bryce51/episodes/NMCG-Patriot-News-Network-with-Craig-eg4h45>.

⁵⁴ Algernon D’Amassa, *‘Watch Your Six.’ New Mexico Civil Guard ‘s Facebook Page Calls Out New Mexico Residents*, Las Cruces Sun News (June 18, 2020), <https://perma.cc/DBW6-H9PX>.

⁵⁵ *Id.*

⁵⁶ Matthew Reisen, *NM Civil Guard Is Marching Forward, Despite Calls to Step Down*, Albuquerque J. (July 4, 2020), <https://perma.cc/4CML-GFUU>.

⁵⁷ David Stevens, *NM Civil Guard at Protests to “Defend” Citizens, Property*, E. N.M. News (June 3, 2020), <https://perma.cc/XTQ5-KA26>.

⁵⁸ New Mexico Civil Guard, Facebook (May 27, 2020, 8:07 A.M.), <https://perma.cc/Y9KM-N758>.

patriots.”⁵⁹ Defendant Petty has confirmed that NMCG members “carry things like pepper spray.”⁶⁰

55. NMCG believes that its lack of accountability to civilian authority means that it has a greater deterrent effect than actual law enforcement because, whereas protesters “know what the police are going to do,” they “don’t know what [NMCG is] going to do,” making the group “a question mark.”⁶¹

C. NMCG’s Activities Threaten Public Safety

56. The threat of violence accompanies NMCG at all protests, demonstrations, and public gatherings it attends.

57. By appearing armed and uniformed at such events, NMCG creates a risk that its members will be mistaken for authorized police or military personnel, confusing members of the public and complicating the efforts of law enforcement to respond to any unrest that arises at those events. For those members of the public that are not confused and recognize NMCG as a private group, NMCG’s armed and coordinated presence serves to intimidate and suppress public discourse on matters of public concern. Law enforcement must also take into account the risk of triggering violence on NMCG’s part when determining whether and how to intervene in any disturbances that occur at public gatherings attended by the group.

58. NMCG members’ stated intent to interpose themselves between protesters and to use force if they believe it necessary⁶² poses an ongoing risk of violence. This threat is

⁵⁹ New Mexico Civil Guard, Facebook (Apr. 21, 2020, 5:15 P.M.), <https://perma.cc/PC39-ZQZF>.

⁶⁰ David Stevens, *NM Civil Guard at Protests to ‘Defend’ Citizens, Property*, E. N.M. News (June 3, 2020), <https://perma.cc/XTQ5-KA26>.

⁶¹ Matthew Reisen, *NM Civil Guard Is Marching Forward, Despite Calls to Step Down*, Albuquerque J. (July 4, 2020), <https://perma.cc/4CML-GFUU>.

⁶² *NMCG Patriot News Network with Craig*, NMCG Patriot News Network, at 41:36–58 (June 30, 2020), <https://anchor.fm/bryce51/episodes/NMCG-Patriot-News-Network-with-Craig-eg4h45>.

magnified because NMCG paints protesters with a broad brush, accusing them of being aligned with Antifa, which it alleges is a violent organization.⁶³ And given NMCG’s frequent posting of violent imagery and rhetoric on its Facebook page,⁶⁴ individuals who have been accused by NMCG of being affiliated with Antifa understandably fear that they will be harmed by the group or by those who follow its activities.



Source: New Mexico Civil Guard, Facebook (July 7, 2020, 8:34 A.M.), <https://perma.cc/5HK4-4Q6S>.

⁶³ See *supra* ¶ 51; New Mexico Civil Guard, Facebook (June 29, 2020, 12:12 P.M.), <https://perma.cc/ZQ3S-QRVZ> (describing a protester displaying her middle fingers to a police officer in an image as a “white ANTIFA girl”); New Mexico Civil Guard, Facebook (June 17, 2020, 5:42 P.M.), <https://perma.cc/YZG9-9QRL> (describing protesters involved in the June 15 incident as “white Antifa guy[s]” and the shooter as “Hispanic victim”); New Mexico Civil Guard, Facebook (June 16, 2020, 7:58 A.M.), <https://perma.cc/5NGR-YXVY> (describing individuals who attended June 15 protest at Oñate statue as “ANTIFA ‘peacefull [sic] protesters’”).

⁶⁴ New Mexico Civil Guard, Facebook (June 29, 2020, 9:30 P.M.), <https://perma.cc/WX6W-38QH> (meme with scene of Clint Eastwood aiming a shotgun in *Gran Torino* with the caption “when there are no police most crimes will carry the death penalty”); New Mexico Civil Guard, Facebook (June 25, 2020, 6:39 P.M.), <https://perma.cc/US4L-BFTH> (video of an individual using a flamethrower); New Mexico Civil Guard, Facebook (June 25, 2020, 8:15 A.M.), <https://perma.cc/GV93-KKHV> (meme of statues depicted as battering people, suggesting that NMCG believes that efforts by protesters to remove statues should be quelled with violence); New Mexico Civil Guard, Facebook (June 24, 2020, 9:50 A.M.), <https://perma.cc/L5JA-28GX> (meme expressing eagerness for calls to “defund the police” because “a do-over of the wild west does sound pretty exciting”).

59. Typifying the group’s attitude toward violent conflict, Defendant Fitzgerald describes NMCG as engaged in a “cold civil war” and muses about the possibility that it might “heat up.”⁶⁵ He describes the standoffs against federal authorities at Ruby Ridge and Waco as instances of “patriots” who stood up to “federal tyranny.”⁶⁶

60. Some NMCG members are affiliated with white supremacist movements with a history of violence. Defendant Fitzgerald is a member of the Proud Boys,⁶⁷ a group designated by the Southern Poverty Law Center as a hate group and some of whose members participated in the 2017 “Unite the Right” rally held in Charlottesville, Virginia.⁶⁸ Defendant Spangler has a tattoo of a swastika on his shoulder⁶⁹ and has served as a leader of an organization called the New Confederate States of America.⁷⁰ NMCG members are cognizant that the organization is perceived as racist⁷¹ and make “jokes” about white sheets, goose-stepping, and cross burnings being part of their activities.⁷²

61. As demonstrated by the violence that erupted at the June 15 protest at the Oñate statue near Old Town in Albuquerque, NMCG’s presence at political events has the effect of escalating tensions and thereby increasing the risk of violent confrontations.

⁶⁵ *NMCG Patriot News Network with Craig*, NMCG Patriot News Network, at 3:38–44 (June 30, 2020), <https://anchor.fm/bryce51/episodes/NMCG-Patriot-News-Network-with-Craig-eg4h45>.

⁶⁶ *Id.* at 4:52–5:48.

⁶⁷ *Id.* at 0:07–17.

⁶⁸ *Proud Boys*, S. Poverty L. Center, <https://perma.cc/8X5Y-7R4Y> (last visited July 6, 2020).

⁶⁹ Matthew Reisen, *NM Civil Guard Is Marching Forward, Despite Calls to Step Down*, Albuquerque J. (July 4, 2020), <https://perma.cc/4CML-GFUU>

⁷⁰ CSA II®: The New Confederate States of America, <https://perma.cc/NMH7-HAVZ> (last visited July 7, 2020).

⁷¹ *See, e.g., Oñate Statue and the Proud Boys*, NMCG Patriot News Network, at 17:22–17:28 (June 30, 2020), <https://anchor.fm/bryce51/episodes/Oate-statue-NMCG-and-Proudboys-eg4ri6> (“We better calm it down with the red hair and blonde hair and blue eyes, they already think we’re racist.”).

⁷² Matthew Reisen, *NM Civil Guard Is Marching Forward, Despite Calls to Step Down*, Albuquerque J. (July 4, 2020), <https://perma.cc/4CML-GFUU>.

62. The June 15 protest began with a prayer and peaceful demonstration in Albuquerque's Tiguex Park.⁷³ Local citizens gave speeches in favor of removing the "La Jornada" statue featuring Oñate, located in front of the Albuquerque Museum across the street.⁷⁴

63. Tensions escalated, however, when the crowd moved toward the statue, which was being guarded by members of the NMCG.⁷⁵ Defendant Burks later admitted that members of the NMCG were present not because they wished to express a particular point of view regarding preservation of the statue, but rather because they wanted to prevent—by any means *they* deemed appropriate—the demonstrators from tearing it down.⁷⁶

64. Video from the event shows several members of the NMCG circling the statue, dressed in camouflage fatigues, helmets, and other military-style gear, and carrying assault rifles.⁷⁷ According to Defendant Spangler, one NMCG member at the event had a 75-round drum magazine.⁷⁸ As people started to climb the statue, NMCG members began yelling, pushing, and physically restraining the protesters.⁷⁹

65. NMCG's presence fostered and encouraged violence by counter-protesters unaffiliated with NMCG. The armed presence simultaneously intimidated protesters and established an environment in which counter-protesters resorted to violence over words to convey their message. Steven Ray Baca, who does not appear to be a member of NMCG, joined

⁷³ Anthony Jackson et al., *'Horried and Disgusted Beyond Words,'* Albuquerque J. (June 15, 2020), <https://perma.cc/7AGK-EZAG>

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Matt Zapotosky et al., *Former City Council Candidate Arrested After Man Is Shot at New Mexico Protest with Militia Group*, Wash. Post (June 16, 2020), <https://perma.cc/F7UX-LTC8>.

⁷⁷ Wash. Post, *Man Shot at Albuquerque Protest, Police Detain Armed Militia Members*, at 0:05-0:41, YouTube.com (June 16, 2020), https://youtu.be/uW_inpGNBkI.

⁷⁸ *NMCG Patriot News Network and the Devil Dog Wes*, NMCG Patriot News Network, at 26:21–24 (June 29, 2020), <https://anchor.fm/bryce51/episodes/NMCG-patriot-News-Network-and-the-Devil-Dog-Wes-eg3o6c>

⁷⁹ Wash. Post, *Man Shot at Albuquerque Protest, Police Detain Armed Militia Members*, at 0:05-0:41, YouTube.com (June 16, 2020), https://youtu.be/uW_inpGNBkI.

with NMCG in attempting to keep protesters away from the statue. But with the backdrop of a heavily armed presence seemingly on his side, Baca was not content to express his viewpoint or even to simply restrain protesters. Instead, he began his agitation of the crowd by using a bullhorn and pepper spray, graduated to a battery on a woman with her back turned, escalated his violence further to an aggravated battery against another woman in the defenseless position of facing away from Baca, and finally finished what he began by shooting an unarmed man.

66. After the shooting, NMCG members surrounded and “detained” the shooter with their weapons drawn and “formed a perimeter around him.”⁸⁰ Shortly thereafter, police arrived, dressed in riot gear virtually indistinguishable from the NMCG’s uniform.⁸¹

67. Providing a window into the types of circumstances in which NMCG might use deadly force, the group has defended the shooter’s actions as “justified”⁸² and, in Defendant Rice’s words, a “clean shoot.”⁸³

68. The Governor of New Mexico subsequently issued a statement condemning the violence that broke out at the June 15 protest and the NMCG’s role in instigating it: “The heavily armed individuals who flaunted themselves at the protest, calling themselves a ‘civil guard,’ were there for one reason: To menace protesters, to present an unsanctioned show of

⁸⁰ Wash. Post, *Man Shot at Albuquerque Protest, Police Detain Armed Militia Members*, at 1:13-1:17, YouTube.com (June 16, 2020), https://youtu.be/uW_inpGNBkI; Matthew Reisen, *NM Civil Guard Is Marching Forward, Despite Calls to Step Down*, Albuquerque J. (July 4, 2020), <https://perma.cc/4CML-GFUU>.

⁸¹ Wash. Post, *Man Shot at Albuquerque Protest, Police Detain Armed Militia Members*, at 1:18-1:35, YouTube.com (June 16, 2020), https://youtu.be/uW_inpGNBkI

⁸² *Oñate Statue NMCG and the Proudboys*, NMCG Patriot News Network, at 22:21–31 (June 30, 2020), <https://anchor.fm/bryce51/episodes/Oate-statue-NMCG-and-Proudboys-eg4ri6> (Defendant Fitzgerald stating that if NMCG had not been present at June 15 incident, the shooter “rightfully” would have shot more people).

⁸³ Matthew Reisen, *NM Civil Guard Is Marching Forward, Despite Calls to Step Down*, Albuquerque J. (July 4, 2020), <https://perma.cc/4CML-GFUU>.

unregulated force. To menace the people of New Mexico with weaponry – with an implicit threat of violence – is on its face unacceptable; that violence did indeed occur is unspeakable.”⁸⁴

69. This lawsuit seeks to ensure that NMCG does not contribute to a recurrence of the violence that took place on June 15.

VI. CAUSES OF ACTION

Count I

(Operating as a Military Unit in Violation of the New Mexico Constitution)

70. The State realleges and incorporates by reference all allegations set forth in paragraphs 1 through 69 above.

71. Article V, Section 4 of the New Mexico Constitution confers upon the Governor the exclusive power to call on the militia to keep the public peace.

72. The Governor has the exclusive authority to call on qualified individuals to be in the State Defense Force and to oversee them as commander-in-chief under Article XVIII, Section 1 of the New Mexico Constitution and NMSA 1978, Section 20-2-1(C).

73. Article II, Section 9 of the New Mexico Constitution guarantees that “[t]he military shall always be in strict subordination to the civil power.”

74. Because no further legislation is required to make these provisions operative, they are self-executing. *See State v. Perrault*, 1929-NMSC-099, ¶¶ 10–11, 34 N.M. 438, 441. Moreover, these provisions are enforceable in a civil action to protect the public from the dangers inherent in military units that are independent from civil authority. *See Pa. Light Foot Militia*, 2018 WL 4698657, at *5 (holding that “the City [of Charlottesville], as the local [civil]

⁸⁴ Justine Lopez & Megan Abundis, *Juan de Oñate Statue Removed Following Protest that Dissolved into Chaos*, KOB 4 (June 16, 2020), <https://www.kob.com/albuquerque-news/one-man-injured-at-protest-near-old-town-albuquerque/5760821/>.

authority, may . . . act in accordance with and . . . enforce” an analogous Strict Subordination Clause).

75. NMCG has attempted to organize itself as a “military” unit and exercise peacekeeping functions without having been called to military service by the Governor, without the Governor calling for the militia to keep the public peace, and without accountability to the people in derogation of civil authority.

76. Defendants intend to continue operating as supposed military units, or as members and commanders thereof, in New Mexico.

77. Defendants’ continued operation as supposed military units, or as members and commanders thereof, without authorization by the Governor and independent of the civil power in New Mexico, will violate Article V, Section 4; Article XVIII, Section 1; and Article II, Section 9 of the New Mexico Constitution.

78. Defendants’ ongoing conduct will cause irreparable harm to the State for which no adequate legal remedy exists.

Count II

(NMSA 1978, Section 30-8-8(B) (1963), Abatement of a Public Nuisance)

79. The State realleges and incorporates by reference all allegations set forth in paragraphs 1 through 78 above.

80. Defendants’ ongoing paramilitary activity independent of any civil authority substantially interferes with public health, safety, morals, and welfare and the exercise and enjoyment of public rights and property. *See* NMSA 1978, § 30-8-1 (1963).

81. Defendants have violated and intend to continue violating NMSA 1978, Section 30-27-2.1 (1999), by “exercising or attempting to exercise the functions of a peace

officer” without authority. Because that criminal statute was enacted for the purpose of protecting public safety, its violation constitutes a *per se* public nuisance. See *Espinosa v. Roswell Tower, Inc.*, 1996-NMCA-006, 121 N.M. 306, 310; *Town of Gallup v. Constant*, 1932-NMSC-035, ¶ 21, 36 N.M. 211, 216. Similarly, NMCG’s violation of the New Mexico Constitution by exercising peacekeeping or other functions of the organized militia without having been placed in the organized militia by the Governor and without authority or public oversight is a *per se* nuisance that threatens public safety.

82. Defendants’ ongoing conduct in this manner constitutes a public nuisance that is causing irreparable harm for which no adequate legal remedy exists.

Count III

(NMSA 1978, § 44-6-2 (1975), New Mexico Declaratory Judgment Act)

83. The State realleges and incorporates by reference all allegations set forth in paragraphs 1 through 82 above.

84. Under the New Mexico Declaratory Judgment Act, this Court has power “[i]n cases of actual controversy . . . to declare rights, status and other legal relations whether or not further relief is or could be claimed.” NMSA 1978, § 44-6-2 (1975).

85. Here, there are actual controversies concerning whether NMCG’s paramilitary activities violate the Governor’s exclusive power to act as commander-in-chief of the militia, to establish the ranks of the State Defense Force, and to call out the militia to preserve the public peace, as established in Article V, Section 4, and Article XVIII, Section 1, of the New Mexico Constitution and in NMSA 1978, Section 20-2A-1(C), and whether the exercise of peacekeeping or other military functions without authorization and without oversight by the civil government

violates the Strict Subordination Clause, N.M. Const. art. II, § 9 and New Mexico's prohibition on falsely exercising the functions of peace officers, NMSA 1978, § 30-27-2.1(A) (1999).

86. The Court should declare that:

a. Defendants' exercise of peacekeeping and any other militia functions as a military or paramilitary unit violates the following provisions: Article V, Section 4; Article XVIII, Section 1; and Article II, Section 9 of the New Mexico Constitution, and NMSA 1978, Sections 20-2-1(C), 20-2-2(A), and 20-2-3;

b. Defendants violate NMSA 1978, Section 30-27-2.1(A) (1999) by providing, without lawful authority, armed protection of persons, businesses, or property at protests, demonstrations, and public gatherings.

VII. PRAYER FOR RELIEF

WHEREFORE, the State requests that the Court enter an order:

1) Issuing declaratory relief against Defendants for the above violations of the New Mexico Constitution and state law;

2) Enjoining Defendants and their directors, officers, agents, employees, and members, and their successor organizations and members, from:

a. organizing and operating in public as a military unit independent of New Mexico's civil authority and without having been activated by the Governor of New Mexico;

b. assuming law-enforcement functions by using or projecting the ability to use organized force in response to perceived threats at protests, demonstrations, or public gatherings.

3) Award the State costs and expenses of the suit as provided by law;

- 4) Providing such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

/s/ Raúl Torrez

Raúl Torrez
District Attorney

/s/ James Grayson

James Grayson
Deputy District Attorney

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* Appearing provisionally as associate counsel with separate application for Court approval

† *Pro hac vice* registration forthcoming

Attorneys for Plaintiff State of New Mexico

Dated: July 13, 2020

VERIFICATION

I, James Grayson, Deputy District Attorney in the Office of the Second Judicial District Attorney, state under oath that I am a signer of the foregoing Complaint, that I have read the Complaint, and that the statements contained in the Complaint are true and correct to the best of my knowledge, information, and belief.

/s/ James Grayson_____
James Grayson
Deputy District Attorney

EXHIBIT

A



New Mexico Civil Guard

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Abel Gonzalez

Would you happen to have someone in charge for Carlsbad Eddy County pm me if so

Like · Reply · 3w · Edited



Jason P Bjorn

Abel Gonzalez yes we do please contact Jonathan Vera

Like · Reply · 3w



Abel Gonzalez

Bryce L S Provance ok thank you

Like · Reply · 3w



1



Mike Harris

Message sent

1

Like · Reply · 3w



Jason P Bjorn

Abel Gonzalez or mike harris

Like · Reply · 3w

EXHIBIT

B



New Mexico Civil Guard

Send Message

Like



New Mexico Civil Guard

May 20 ·



Bernalillo has finally has a Captain he will be reaching out to you all in that county shortly



14

4 Comments 1 Share

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Kyle Cote

Who is the PIC of San Juan?

Like · Reply · 5w



1



Jason P Bjorn
Kyle Cote



EXHIBIT

C



New Mexico Civil Guard

Send Message

Like



Like · Reply · 4w



Jason P Bjorn

Everyone stay in contact with your local unit and watch here.

Also any info on your local areas intel on riots or attacks plz message us

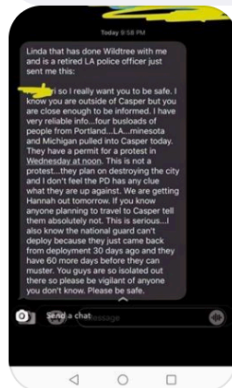
2

Like · Reply · 4w



Abie Gonzales

Bryce L S Provance this for Casper Wyoming tomorrow but I believe they are coming



Like · Reply · 3w